

ROBINSON HURON TREATY LITIGATION FUND

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*Atikameksheng
Anishnawbek*

*Aundeck Omni
Kaning*

Batchewana

Dokis

Garden River

Henvey Inlet

Magnetawan

M'Chigeeng

Mississauga #8

Nipissing

*Sagamok
Anishnawbek*

Serpent River

Shawanaga

Sheguiandah

Sheshegwaning

Thessalon

Wahnapiatae

Wasauksing

Whitefish River

*Wikwemikong
Unceded Indian
Reserve*

Zhiibaahaasing

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ONTARIO APPEAL OF STAGE 1 RULING OF ROBINSON-HURON ANNUITIES CASE COMPLETED – FIRST NATIONS URGE THE COURT TO THROW OUT ONTARIO'S APPEAL

Toronto — On April 28, 2021, the Ontario Court of Appeal concluded its hearing of the Government of Ontario's appeal of the Stage 1 decision in the Robinson Treaties annuities case. The case involves a clause in the Treaty, signed in September of 1850, that provides for the augmentation of the perpetual annuity payable to the Treaty's beneficiaries if revenues generated in the territory allow the Crown to increase the annuity without incurring a loss. The annuity was augmented once in 1875 to 1 pound [\$4.00] per person, and it has not been augmented since. The Robinson Huron Treaty First Nations urged the Court of Appeal to throw out Ontario's appeal.

In 2014, the 21 First Nations under the Robinson Huron Treaty brought a legal action against the governments of Canada and Ontario for breach of treaty, breach of the honour of the Crown and breach of fiduciary duty. They also claim compensation for losses suffered as a result of the Crown's failure to increase the annuities as promised.

"As a People, this colonial court process is not our preferred resolution to a disagreement about treaty implementation, however, in the absence of a negotiation table, we have had to utilize the court system to enforce Crown promises and legal obligations," said Chief Dean Sayers of Batchewana First Nation. "Based on the evidence presented, the Federal and Provincial governments and Ontario residents can now understand that the Treaty is a sacred agreement that has to be interpreted in a way that best reconciles the interests of the parties."

In December 2018, Justice Patricia Hennessy of the Ontario Superior Court released her decision in Stage 1, ruling in favour of the First Nation plaintiffs. The court found, among other things, that the Crown has a mandatory and reviewable obligation to increase the Treaties' annuities when the economic circumstances warrant, and that the economic circumstances will trigger an increase if the net Crown resource-based revenues permit the Crown to increase the annuities without incurring a loss.

Ontario's appeal of the Stage 1 decision was heard by a five-member panel of the Ontario Court of Appeal, which was presided over by Chief Justice George Strathy. Canada did not appeal the Stage 1 decision – but made submissions at the hearing, arguing that Justice Hennessy's Decision be upheld. Five organizations/First Nations were granted intervenor status and also made submissions before the Court: The Assembly of First Nations, Biigtigong Nishnaabeg, the Blood Tribe, the Indigenous Bar Association in Canada and the Union of British Columbia Indian Chiefs.

In their appeal, Ontario argued that the augmentation clause only obligated the Province to increase the annuity to \$4.00, although their lawyers did argue that the Crown was required to index the \$4.00 to inflation. Of course, this would obligate the federal government and not Ontario to pay for the increase. Ontario asked the Court of Appeal to overturn the Trial Judge's decision, including her findings that the Crown has a mandatory and reviewable obligation to increase the Treaties' annuities when the economic circumstances warrant, and that the Crown owes a fiduciary duty to the First Nations.

The Robinson Huron Treaty Chiefs would like to see the Ontario Court of Appeal uphold the Trial Judge's well-reasoned decision in Stage 1 and dismiss Ontario's appeal.

The 21 Robinson Huron Treaty First Nations continue to call on the Governments of Ontario and Canada to negotiate a settlement of this claim. "We're urging Ontario: drop your appeal," continued Chief Sayers. "Stop wasting money and get to the bargaining table. I'm glad we talked about the Ojibwe share of the value of the resources [during the Stage 1 appeal]. It is time for Ontario to honour the augmentation clause to ensure that the wealth generated from the lands and resources will also benefit the First Nations. Indeed, the Northeastern Ontario economy will benefit from a settlement regarding compensation for the beneficiaries."

The Government of Ontario has also appealed the trial judge's decision in Stage 2 of the litigation, which found that the First Nation plaintiffs' claims are not barred by Ontario's limitations legislation and that Ontario does not benefit from the doctrine of Crown immunity. The Stage 2 appeal is scheduled to be heard by the Ontario Court of Appeal in June 2021. Canada has also not appealed the Stage 2 decision.

The Court of Appeal has reserved its decision on the Stage 1 appeal, which it will likely release in the months following its hearing of the Stage 2 appeal.

The full hearing of the Stage 1 appeal is available to be viewed online at:
<https://vimeo.com/user135794168/c66455>.

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